

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

PAN-OSTON CO.¹
Employer

and

Case 26-RC-8407

**SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL 433, AFL-CIO**
Petitioner

**REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

The Employer, Pan-Oston Co., manufactures check-out counters for retail customers. The Petitioner, Sheet Metal Workers' International Association, Local 433, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The petition, as amended at the hearing, seeks a unit of about 157 production and maintenance employees at the Employer's Glasgow, Kentucky facilities, including machine operators, sub-assemblers, assemblers, woodworkers, welders, buffers, grinders, painters, shippers, receivers, loaders, drivers, maintenance employees, inventory control employees, shop support employee, ML programmers and lead employees. There is no dispute by the parties that these employees should be included in the unit. Following a hearing before a hearing officer of the Board, the Employer filed a brief with me.

The issues raised at the hearing and addressed by the parties concern whether an additional 18 employees in 8 classifications should be included in the

¹ The Employer's name appears as amended at the hearing.

unit. The employees in dispute consist of: 1 work order auditor; 1 work order entry; 1 quality auditor; 1 electrical engineer; 1 quality coordinator; 6 design engineers; 5 proto builders; and 2 production engineering support (PES) employees. The Employer asserts that employees in each of these classifications should be included in the petitioned-for unit because they share a community of interest with the employees the Petitioner seeks to represent. The Petitioner opposes the inclusion of these employees and further contends that one of the Employer's proto builders, specifically, Anthony Greer, is a supervisor within the meaning of Section 2(11) of the Act.

Based on the record evidence, relevant case law and arguments advanced by the parties, I find that an appropriate unit of production and maintenance employees must include the Employer's work order auditor, work order entry, quality auditor and proto builders, but need not include the electrical engineer, design engineers and PES employees. As will be explained later, I will permit the Employer's quality coordinator to vote subject to challenge. Also, as to the status of proto builder Anthony Greer, I have concluded that he is not a statutory supervisor. Accordingly, he is eligible to vote. To provide a context for my decision and discussion of these issues, I will first provide an overview of the Employer's operations followed by a review of the factors that govern community of interest and supervisory issues. Then, I will discuss the evidence regarding the issues and the reasoning that supports my conclusions.

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer manufactures belted and non-belted checkout counters for retail customers at facilities located in Canada and Glasgow, Kentucky. In Glasgow, the Employer's operations consist of a main plant located on Aberdeen Drive and two warehouses that are located respectively on College Street and Industrial Drive.

Production of the Employer's check-out counters takes place at the main plant on Aberdeen Drive, a facility which consists of a two-story front office, a single-level production or shop floor and a small, two-story portable maintenance office building. The Employer operates two shifts at the main plant that run from 7:00 a.m. to 3:30 p.m. and 3:30 p.m. to 12:00 a.m., Monday through Friday.

The College Street warehouse is approximately 2½ miles from the main plant and is akin to a research and development center. Here, initial product designs are produced by the five proto builders the Employer seeks to include in the unit. The Industrial Drive warehouse is located about 3½ miles from the main plant and is the site where the Employer's shipping and receiving operations are performed by its shippers, receivers and inventory control employees.

Currently, two chief executive officers serve as the Employer's highest-ranking officials. Beneath them in the organizational structure is the Employer's president, followed by eight directors, including Director of Manufacturing Services Larry Mustread, Director of Engineering John Bray, Director of Human Resources Glenn Byrd, and Director of Quality Assurance and Product Service Tommy Houchens.

Next in the hierarchy is Plant Manager Jimmy Kealhofer. Reporting to Kealhofer are production supervisors Rusty McCandless, Doug England, Tommy Staples, and Mark Parks, each of whom oversees employees who operate presses and perform assembly work. Dennis Stephens is the Employer's shipping supervisor. Stephens oversees work performed by the Employer's shipping and receiving employees and inventory control employees.

II. DISCUSSION AND ANALYSIS

A. Applicable Legal Standards

As indicated earlier, two issues have been raised for my consideration in this matter: (1) whether the Employer's work order auditor, work order entry, quality auditor, electrical engineer, quality coordinator, design engineers, proto builders, and production engineering support employees share a community of interest with employees in the petitioned-for unit; and (2) whether proto builder Anthony Greer is a supervisor within the meaning of Section 2(11) of the Act. The legal standards that will govern each of these issues are set forth below.

Community of Interest

In The Boeing Company, 337 NLRB 152 (2001), the Board explained its procedure for determining an appropriate unit as follows:

"The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB 662 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir.1997). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g.,

Bartlett Collins Co., 334 NLRB 484 (2000), and *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967). In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Ore-Ida Foods*, 313 NLRB 1016 (1994), *affd.* 66 F.3d 328 (7th Cir. 1995). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd. on other grounds* 190 F.2d 576 (7th Cir. 1951)."

Supervisory Issue

Section 2(11) defines "supervisor" as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." To qualify as a supervisor, it is not necessary that an individual possess all of the powers listed in Section 2(11). Rather, the possession of any one of them is sufficient to establish supervisory status, provided the exercise of authority involves the use of independent judgment and is not merely routine or clerical in nature. Harborside Healthcare, Inc., 330 NLRB 1334 (2000). If supervisory authority is exercised in a merely routine, clerical, perfunctory, or sporadic manner, then supervisory status is not conferred on an employee. Bowne of Houston, Inc., 280 NLRB 1222 (1986). The burden of proving supervisory status rests on the party alleging that such status exists. Dynamic Science, Inc., 334 NLRB 391 (2001) (citing NLRB v. Kentucky River Community Care, 121 St.Ct.

1861 (2001)). The Board will refrain from construing supervisory status too broadly, as the consequence of doing so is to remove individuals from the protection of the Act. Quadrex Environmental Co., 308 NLRB 101 (1992).

B. Application of Legal Standards

Work Order Auditor

The Employer's lone work order auditor is Steve Pennington, a former shipping and receiving employee who has held the work auditor position for about 9 months.

As a work order auditor, Pennington is responsible for closing out work orders. This job duty requires him, with the assistance of either a lead employee or painter, to weigh paint that will be applied to a checkout counter. The weighing of paint occurs on the shop floor. After the paint is weighed on the shop floor, Pennington is then required to take the information gathered in this process and enter it into a computer located on the second floor of the main plant. After a product is fully assembled, Pennington collects data from documents prepared by data-entry personnel and machine operators to ensure that the amount of time and raw materials used to make a product is recorded on the appropriate work order. Once this is done, Pennington closes out the work order. The process of closing out work orders puts Pennington in frequent contact with painters and assemblers. In addition to closing out work orders, Pennington is often required to perform various production-related jobs to fill in for absent employees.

Pennington's work area is located in the small, portable two-story maintenance office building in the back of the main plant. This office building is also utilized by a manufacturing employee, maintenance employee and maintenance manager and is near the work areas of some machine operators, electrical assemblers and sub-assemblers. Pennington currently reports to an unnamed manufacturing engineer who also supervises the Employer's four petitioned-for ML programmers. Pennington works from 6:30 a.m. to 3:00 p.m., is paid by the hour and receives the same benefits as employees in the petitioned-for unit.²

Based on the facts above, I find that the Employer's work order auditor, Steve Pennington, shares a sufficient community of interest with the production and maintenance employees to warrant his inclusion in the unit. The evidence clearly establishes that he frequently interacts with and is assisted by production employees when he weighs raw materials that are used in the production process. This interaction is necessary for Pennington to perform his primary job duty of closing out work orders. Also of significance is the fact that the work order auditor earns a wage similar to production employees, receives the same benefits and shares common supervision with ML programmers, a petitioned-for classification. Accordingly, the position of work order auditor shall be included in the unit. Avon Products, 250 NLRB 1479 (1980) (inclusion of inventory clerks in

² The Employer has a salary structure for its hourly employees that starts at \$7.00 per hour and ends at \$14.87 per hour. Salaried employees earn anywhere from \$32,500 to \$51,000 per year. All employees, whether hourly or salaried, receive the same benefits package which includes, among other things, medical, dental, vision and short-term disability insurance. All employees are subject to the same provisions contained in the Employer's employee handbook.

production and maintenance unit who engage in duties similar to Employer's work order auditor).

Work Order Entry

Crissy Whitlow is the Employer's lone work order entry employee. Whitlow, an hourly paid employee who has held this position since December 2002, works on the Employer's first shift under the supervision of Production Supervisor Tommy Staples. Whitlow's work area is located in a second floor office in the front of the main plant near work areas occupied by some of the Employer's production employees.

As a work order entry employee, Whitlow creates work orders based on customer product orders that she receives from the scheduling department. This document is delivered by Whitlow to the production floor and is used by production employees to determine what to produce. Work orders are also used by the Employer to track material, labor and time. Depending on the flow of the product, Whitlow delivers work orders to the shop floor once or as many as 20 times a day. Whitlow will interact with employees on the shop floor by answering questions posed regarding her work orders.

The Employer contends that its work order entry employee is a plant clerical employee. The Board customarily excludes office clerical employees from units of production and maintenance employees, while plant clericals are generally included in such units. Hygeia Coca-Cola Bottling Co., 192 NLRB 1127 (1971); Westinghouse Electric Corp., 118 NLRB 1043 (1957); Raytec Co., 228 NLRB 646 (1977). Plant clericals will be included in a production and

maintenance unit if they have regular contact with unit employees; work in an area adjacent to unit employees; and share common wages, immediate supervision, working conditions and fringe benefits with unit employees.

American Parts System, Inc., 254 NLRB 901, 902 (1981); Jacon Ash Co., 224 NLRB 74, 75 (1976).

The Employer is correct in its assertion that Whitlow is a plant clerical. As a work order entry employee, Whitlow has regular contact with production employees in performing her work order duties. The creation of work orders appears to be integral part of the Employer's production process inasmuch as this document provides guidance to the production employees responsible for manufacturing the Employer's product.

Also supporting a finding that Whitlow is a plant clerical is the fact that her office is in close proximity to some of the Employer's production employees. In addition, the evidence reveals that Whitlow and the production employees share similar wages, common supervision and receive the same benefits. Based on these facts, I find that the work order entry employee is a plant clerical who should appropriately be included the unit. S&S Parts Distributors Warehouse, Inc., 277 NLRB 1293 (1985).

Quality Auditor

The Employer's one quality auditor, Jamie Moore, works in the quality department under the supervision of Tony Houchens, the Employer's director of quality assurance and product service. Formerly a brake operator, Moore has held the quality auditor post for the past 1½ years. Moore occupies an office

next to Houchens in the front section of the main plant that is near two production areas where some of the Employer's machine operators are stationed.

As a quality auditor, Moore is responsible for creating and updating final assembly inspection sheets – a check sheet completed by machine operators at the end of the production line that specifies whether a product complies with the Employer's standards. Moore also randomly measures and evaluates parts produced by production employees to determine whether they comply with the Employer's standards. This random inspection process occurs on the shop floor. Parts that do not pass Moore's inspection are remade by production employees.

In addition to these inspections, Moore's job responsibilities also include quality intervention. Quality intervention requires Moore to inspect marginally defective production parts on the shop floor to determine whether an order should be shipped to the customer. Performing this job duty requires Moore to work with machine operators and ML programmers.

Moore's works hours are from 7:30 a.m. to 4:30 p.m. He spends about one hour of his workday in his office. The remaining time is spent on the shop floor performing inspections and quality intervention. Moore is an hourly paid employee and receives the same benefits as employees in the petitioned-for unit.

Quality control employees are generally included in a petitioned-for unit based on community of interest standards. Blue Grass Industries, Inc., 287 NLRB 274 (1987) (including employees who inspected products at end of production line). Similarly, I find that the Employer's quality auditor shares a sufficient community of interest with the production and maintenance employees

to warrant his inclusion in the unit. The evidence clearly establishes that he frequently interacts with production employees as he inspects production parts and weighs raw materials that are used in the production process. Also of import is the fact that the quality auditor earns the same type of compensation as production employees and receives the same benefits. Accordingly, the position of quality auditor shall be included in the unit. Id.; Keller Crescent Co., Inc., 326 NLRB 1158 (1998).

Quality Coordinator

The Employer employs one quality coordinator – Sandra Forrest. Forrest is a salaried employee who works from 7:30 a.m. to 4:30 p.m. in a second-floor office in the main plant. Forrest reports to the Tony Houchens, director of quality assurance and product services.

As a quality coordinator, Forrest is responsible for drafting and updating work instructions that are used by production employees. These work instructions describe the responsibilities of production employees, procedures to be followed when using the Employer's production machines and step-by-step procedures necessary to create certain products. The work instructions she drafts may also include attachments such as illustrations and photographs taken by Forrest. Forrest drafts work instructions using input she obtains from supervisors and production employees during face-to-face conversations on the shop floor and information she obtains from instruction manuals that accompany production machines. Forrest spends half of her workday writing instructions in

her office. The rest of her time is spent interacting with employees on the floor to gather information needed to draft instructions.

Besides drafting work instructions, Forrest's duties also include managing the Employer's customer complaint system and corrective action system and working with incoming inspections of raw materials. The job of quality coordinator requires technical, management, organizational and human relations skills gained through education from college level courses, as well as programming and computer analysis capabilities.

While the Board has historically included quality control employees in a petitioned-for unit, I find that there is insufficient evidence for me to determine whether the Employer's quality coordinator, Sandra Forrest, should be included in the unit. The record reveals that Forrest is primarily involved in drafting work instructions. While performing this duty often requires her to interact with production employees, drafting work orders does not reflect a typical quality control function. Besides drafting work instructions, Forrest also manages the customer complaint system and corrective action system and works with incoming inspections of raw materials. However, the record fails to adequately disclose what these specific duties entail. Because the record fails to fully reveal the nature of Forrest's role at the facility, I am unable to make a determination with regard to her placement in or out of the unit. Accordingly, I will permit Forrest to vote subject to challenge.

Design Engineers

The employer has six salaried design engineers – John Spainhoward, Todd Sikes, Gary Radish, Steve Staggs, Andy Ritter and Dave Sullivan. These employees are primarily responsible for using computer design software to design new checkout counters and modified versions of existing checkout counters. They create these designs based on information obtained from either the Employer's conceptual designer or sketches submitted by the Employer's customers. During the course of preparing these drawings, designers interact with production employees to ascertain whether a production machine is capable of handling the product specifications requested by the customer. Design engineers prepare a combined total of about 200 to 300 drawings per week that cover work that is ultimately performed by production employees at each stage of the manufacturing process.

Once drawings are prepared and approved, they are then released to proto builders who use the drawings to manufacture the depicted unit for the first time. As a prototype is being built, design engineers will daily field and answer questions posed by proto builders related to their drawings and will also observe the production process to ensure the prototype is being built correctly. The drawings produced by design engineers are also regularly used by ML programmers for guidance when programming production equipment.

In addition to product design, design engineers also evaluate engineering change request (ECR) forms that are submitted to them by production supervisors. ECR forms are used by production employees to either specify

difficulties experienced in the production of a part depicted on drawings produced by design engineers or to suggest design changes. The design engineers review and evaluate the ECR forms to ascertain what if any design changes should be made. The task of reviewing ECR forms often requires design engineers to interact with the production employee who completed the form to clarify ambiguous information recorded on the form. Since November 1, 2003, design engineers have received an average of 5 to 10 ECR forms per week.

Design engineers are sometimes paged by lead employees to come to the production floor and provide “shop support” by answering questions and clarifying issues regarding their drawings. Within the past three weeks, design engineer Staggs has been paged to the production floor 8 to 10 times. According to Staggs, the length of time he spent on the production floor on each of these occasions amounted to only a few minutes.

Design engineers report to Director of Engineering John Bray and work from 7:30 a.m. to 5:00 p.m. in a second floor office in the main plant. They each are paid a set salary and share the same benefits as employees in the petitioned-for unit. Although degrees are not required for the design engineer position, design engineer Ritter has a B.S. degree in engineering and Sullivan possesses an associate’s degree. In addition to an associate’s degree in industrial technology, Staggs has had CAD (computer aided design) training and worked for the Employer as an engineering supervisor immediately prior to becoming a design engineer in 2002. Sikes held numerous positions on the

shop floor before becoming a design engineer. None of the design engineers are registered professional engineers.

The record evidence establishes that design engineers lack a sufficient community of interest to require their inclusion in the petitioned-for unit. The duties of the design engineers bear no resemblance to the work performed by production employees. Design engineers do not perform production and maintenance duties. Thus, there is no interchange between the two groups. The record is void of any evidence showing similarity of skills between the two groups. While design engineers have some contact with production employees, the extent of their contact is insubstantial and incidental to their primary design drawing function. Although they share similar benefits, the fact that design engineers are salaried employees and production employees are not also highlights another critical difference between these two groups of employees. Finally, design engineers are supervised by the director of engineering who does not supervise any employees included in the unit. Accordingly, I will not include design engineers in the unit.

Electrical Engineer

The Employer has one electrical engineer - Dan Compton. Compton, a former ML programmer, is responsible for filing and maintaining the Employer's underwriter laboratories certifications, drawing detailed electrical designs for the electrical components of the Employer's counters and providing shop support by answering questions posed by electrical department employees pertaining to the electrical assembly process. Compton also trains electrical department and

assembly employees, on an as needed basis, on how to read electrical drawings, electrical schematics and test electrical distribution packages. The majority of Compton's time is spent on the shop floor. Compton has an associate's degree and is currently working toward obtaining a bachelor's degree from Western Kentucky University. Compton also has a high degree of knowledge concerning electrical building.

Compton works from 6:30 a.m. to either 3:30 p.m. or 4:00 p.m. and reports to John Bray, director of engineering. Compton is a salaried employee and shares the same benefits as employees in the petitioned-for unit.

Like design engineers, the Employer's electrical engineer does not possess a sufficient community of interest with the petitioned-for unit to justify his inclusion in the unit. My decision not to include the electrical engineer is supported by the fact that the electrical engineer is compensated differently than the unit employees, does not interchange with unit employees, is separately supervised and primarily performs a highly distinct function from that of unit employees. Accordingly, I will not include the position of electrical engineer in the unit.

PES Employees

Currently, the Employer has three PES (or production engineering support) employees – Glen Shirley, Melissa Helton and Judy Parker.³ Helton and Parker are hourly paid employees who work under the supervision of Shirley.

³ At the hearing, the parties stipulated that Glenn Shirley is a supervisor within the meaning of Section 2(11) of the Act.

Shirley reports to Director of Engineering John Bray. The PES employees are located in a second floor office in the main plant.

PES employees are responsible for generating color-coded shop paper, a document that specifies how a customer order should be routed through the production process. This duty arises once a design engineer drawing is approved for manufacturing by department representatives. Once a drawing is received, PES employees first obtain information from the drawing such as the type, size and amount of material that will be used to produce a check-out counter. They will then input that information into the Employer's computer system to create the shop paper. Chastity Bass, a shop support employee, prints the shop paper and distributes it to the production floor. The shop paper Bass delivers accompanies each part being manufactured from one work station on the production floor to the next.

The evidence fails to conclusively establish that the Employer's two PES employees share a sufficient community of interest with employees in the petitioned-for unit. First, PES employees and production employees do not share common supervision. Second, although PES employees are responsible for producing shop paper documents that are used in the production process, there is no evidence that PES employees interact with production employees at any time before, during or after these documents are produced. In fact, unlike the Employer's work order entry employee who I found to be a plant clerical, PES employees play no role in printing or distributing these documents to the production floor. There is no evidence of PES employees performing work on

the production floor. These facts militate against their inclusion in the unit. As such, the PES employees will not be included in the petitioned-for unit.

Mitchellace, Inc., 314 NLRB 536 (1994).

Proto Builders

The Employer employs five proto builders - Duane Cook, Richie London, Doug Lloyd, Randy Clarkson and Anthony Greer. Since December 2003, these employees have been stationed at the Employer's College Street warehouse. Although no specific time was specified, the Employer anticipates returning these employees to the main plant.

Proto builders are responsible for building new products (or prototypes) based on designs created by design engineers. Once approved, the prototypes are then manufactured in the main plant by production employees. Proto builders also frequently assist machine operators with the production of difficult product and help solve production problems that arise. Additionally, proto builders make 99% of the Employer's service parts or parts that were, for example, damaged during shipping or those requested by a customer to replace damaged or old parts. This job duty is considered by the Employer to be a "production function."

With respect to their specific responsibilities during the production of a prototype, proto builder Duane Cook produces machine line products such as shear, pegas and breaks using equipment identical to that utilized by machine operators in the Employer's main plant. Although Cook's production duties primarily occur at the College Street warehouse, during the past three months,

an estimated 15 to 20% of Cook's time was spent performing this job duty at the main plant.

Richie London's primary task is to paint products at the College Street warehouse. The metal bending process is the main job duty of Doug Lloyd. Randy Clarkson handles spot welding, welding and assembly.

Although alleged by the Petitioner to be a statutory supervisor, the Employer characterizes Anthony Greer as a lead person. Greer builds prototypes, carries service orders to and from the main plant, works directly with the quality, engineering and programming departments to get product programmed to run prototypes, coordinates the flow of product, and attends production meetings three times a week. Like the other proto builders, Greer is supervised by Larry Mustread, the Employer's director of manufacturing services. Greer lacks the authority to hire or fire employees and has never disciplined employees. Although requests for leave are submitted to Greer, leave requests are ultimately approved by Mustread. These facts fail to substantiate Petitioner's claim that Greer is a statutory supervisor. Chrome Deposit Corp., 323 NLRB 961 (1997).

Each of the Employer's proto builders, including Greer, worked in either production or assembly at the main plant prior to becoming a proto builder. Proto builders work from 6:00 a.m. to 2:30 p.m. and earn an hourly wage that is slightly higher than the Employer's production employees. Proto builders share the same benefits as employees in petitioned-for unit and are occasionally required to work overtime.

There is ample evidence to establish that proto builders share a sufficient community of interest with employees in the petitioned-for unit to warrant their inclusion in the unit. The work performed by proto builders in making prototypes is virtually the same type of work performed by the Employer's production employees. Further, proto builders are directly involved in the Employer's production operation by virtue of the fact that they produce service parts and frequently assist production employees in the main plant with production-related tasks. Besides sharing job duties that are similar to production employees, proto builders and production employees enjoy similar wages and benefits. These facts compel me to include them in the unit.

III. CONCLUSION AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction here.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.⁴

INCLUDED: All full-time and regular part-time production and maintenance employees including, machine operators, sub-assemblers, assemblers, woodworkers, welders, buffers, grinders, painters, shippers, receivers, loaders, drivers, maintenance employees, inventory control employees, shop support employee, ML programmers, lead employees, work order auditor, work order entry, quality auditor and proto builders employed at the Employer's facilities in Glasgow, Kentucky.

EXCLUDED: All employees supplied by personnel services, office clerical employees, professional employees, electrical engineer, design engineers, PES employees, guards, and supervisors, as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Sheet Metal Workers' International Association, Local 433, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. [Employees engaged in any economic strike,](#)

⁴ As indicated earlier, the Employer's quality coordinator, Sandra Forrest, will be permitted to vote subject to challenge.

who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of

sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **February 27, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008 or (615) 736-7761. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **March 5, 2004**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 20th day of February 2004.

/S/

Thomas H. Smith,
Acting Regional Director
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National Labor Relations Board
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Classification Outline

177-8500-0000
177-8580-0000
420-2900-0000
440-1760-1500